YALE LAW JOURNAL

Published monthly during the Academic Year by the Yale Law Journal Co., Inc.
Edited by Students and members of the Faculty of the Yale School of Law.

SUBSCRIPTION PRICE, $4.50 A YEAR **SINGLE COPIES, 70 CENTS**

Canadian subscription price is $5.00 a year; foreign, $5.25 a year.

If a subscriber wishes his copy of the JOURNAL discontinued at the expiration of his subscription, notice to that effect should be sent; otherwise, it is assumed that a continuation of the subscription is desired.

THE ARIZONA LABOR DECISION

In *Truax v. Corrigan* (1921) 42 Sup. Ct. 124, the Court held unconstitutional an Arizona Statute limiting the use of injunctions in labor disputes. So many and so important are the questions raised by this case that it is possible within the limits of a short discussion to call attention to some of the more important issues only.

The case is thrown into sharper relief by the decision of the same Court only two weeks earlier in *American Steel Foundries v. Tri-City Trades Council* (1921) 42 Sup. Ct. 72, upholding the almost identical provisions of the Clayton Act.[1] The decision in the principal case is

[1] Act of Oct. 15, 1914 (38 Stat. at L. 730, 738).

There is one distinction important on the point of due process between the Arizona Statute (Ariz. Civil Code, 1913, par. 1464) and the Clayton Act, *supra*, for the latter has the provision, not contained in the former: "nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States." Sec. 20. The Clayton Act was construed in *Duplex Co. v. Deering* (1921) 254 U. S. 443, 41 Sup. Ct. 172. Similar statutes exist in other states. Wash. Laws, 1919, ch. 185; Or. Laws, 1919, ch. 346, upheld in *Green-*

made to rest upon the construction given the Arizona Statute by the Arizona Supreme Court. In discussing the case our interest must necessarily center about the majority opinion of Chief Justice Taft, but mention should be made of the three noteworthy dissenting opinions. Justice Holmes again calls attention to the dangers of a "delusive exactness" in the application of the Fourteenth Amendment and the need of "social experiments" in "the insulated chambers afforded by the several states, even though the experiments may seem futile or even noxious" to us; Justice Pitney, with whom concurred Justice Clarke, states clearly and concisely the issue between majority and minority as to the equal protection of the laws; while Justice Brandeis presents a veritable treatise upon the rules of law applicable to disputes between employer and employee in England, in the British Dominions, and in this country.

The Arizona Statute in effect prohibited the issuance of an injunction in a labor dispute "unless necessary to prevent irreparable injury to property or to a property right" for which injury there was no adequate remedy at law; and it further provided that any injunction issued should not prohibit various acts, including "recommending, advising or persuading others by peaceful means" to cease from working or from patronizing or employing any party to a labor dispute. The plaintiffs brought an action for injunctive relief alleging that the defendants were insolvent and unable to respond in damages and that the plaintiffs had no other speedy, adequate remedy, and setting forth certain acts committed by the defendants during the course of a strike against the plaintiffs concerning terms of employment in an endeavor to drive patronage away from the plaintiffs' restaurant. After a trial on the facts judgment was given for the defendants, and this judgment was affirmed by the Arizona Supreme Court.[2] The plaintiffs then commenced another action against slightly different defendants, alleging the same acts and again asking for an injunction. The complaint was

field v. Central Labor Council (1920, Or.) 192 Pac. 783. See also Okla. Rev. Laws, 1910, sec. 3764, upheld in *State v. Coyle* (1912) 7 Okla. Cr. 50, 122 Pac. 243; *Ex parte Schweitzer* (1917) 13 Okla. Cr. 154, 162 Pac. 1134. In the comments on *Present Day Labor Litigation* (COMMENTS (1921) 30 YALE LAW JOURNAL, 280, 404, 501, 618, 736; 31 *ibid.* 86) it was pointed out that while the majority rule is that "peaceful picketing" is not unlawful, a minority hold otherwise, and that statutes legalizing peaceful picketing are open to difficulties of definition. 30 *ibid.* 405, 738. Chief Justice Taft in the *American Steel Foundries* Case and in the principal case states that peaceful picketing is a contradiction in terms which both the Clayton Act and the Arizona Statutes sedulously avoid, but in the former case he held that peaceful persuasion by a single union representative stationed at each entrance to the employer's plant was permissible. But in the principal case Justice Brandeis states that the Court in the former case held peaceful picketing not unlawful. The difference is at least largely one of definition.

[2] *Truax v. Bisbee Local No. 380* (1918) 19 Ariz. 379, 171 Pac. 121.

demurred to, the Court sustained the demurrer and rendered judgment for the defendants. This judgment was sustained by the Arizona Supreme Court.[3] It is this judgment which the Federal Supreme Court now reverses.

The acts complained of by the plaintiffs consisted in part of patrolling in front of the plaintiffs' restaurant with banners and loud appeals, making libellous charges concerning one of the plaintiffs and applying abusive epithets to him, disparaging the service rendered in the restaurant and the character of its patrons, and making threats of injury against would-be patrons. The allegations of the complaint set forth a very drastic form of campaign upon the part of the defendants which could hardly be termed "peaceful." But the Arizona Court held that it was not shown not to have been peaceful, apparently because there was an absence of direct physical force and violence.

The opinion of Chief Justice Taft is divided into two parts; a discussion of the guaranty of due process of law, and a discussion of the guaranty of the equal protection of the laws, each given by the Fourteenth Amendment.[4] As to the first guaranty, the discussion proceeds on familiar lines that the business of the plaintiffs is a property right, and that to hold they are "remediless" where their business has been thus largely destroyed is to deny them due process. With the statements made in this part of the opinion it seems there may be rather general agreement.[5] One perhaps might suggest that the Court, in view of decisions such as those sustaining the Arizona Employers' Liability Act and the New York Rent Law,[6] should attempt to state how far under the police power the relation of employer and employee may be subjected to peculiar regulation by a state legislature.[7] The question of the constitutionality of the Kansas Industrial Court may call forth such a discussion.[8] In any event it seems probable that as yet at least the state legislatures cannot render *remediless* such injuries as those the plaintiffs are alleged to have received.

But it cannot be too strongly emphasized that the decision of this case cannot and is not made to depend upon this part of the Court's opinion. For the Statute deals only with the matter of injunctions[9] and the

---

[3] *Truax v. Corrigan* (1918) 20 Ariz. 7, 176 Pac. 570.

[4] The words of the Amendment are given in COMMENTS, *infra*, at p. 422.

[5] An interesting subordinate question is how far the federal court is bound by the lower court's finding of facts or interpretation of facts. The Supreme Court seems correct, on principle and on the authority cited, that no constitutional question should depend upon the shadowy distinction between questions of law and questions of fact. See Isaacs, *The Law and the Facts* (1922) 22 COL. L. REV. 1.

[6] *Arizona Employers' Liability Cases* (1919) 250 U. S. 400, 39 Sup. Ct. 553; *Marcus Brown Holding Co. v. Feldman* (1921) 41 Sup. Ct. 465; *Block v. Hirsh* (1921) 41 Sup. Ct. 458.

[7] See a suggestive note in (1922) 22 COL. L. REV. 78.

[8] See COMMENTS (1921) 31 YALE LAW JOURNAL, 75.

[9] See *supra* note 1. The Statute discussed in *Ex parte Schweitzer, supra* note 1,

Arizona Court, whatever it may have said, had before it only a cause of action for injunctive relief.[10] Chief Justice Taft applies the due process clause only to the making "remediless" the injury to the plaintiffs, and says that if the opinion of the Arizona Court "does not withhold from the plaintiffs all remedy for the wrongs they suffered, but only the equitable relief of injunction, there still remains the question whether they are thus denied the equal protection of the laws." Again, he says that "it is beside the point to say that plaintiffs had no vested right in equity relief, and that taking it away does not deprive them of due process of law," for "this does not meet the objection under the equality clause." The decision, therefore, turns entirely upon this latter guaranty, and any reference to the due process clause can only be dictum. The Court does not attempt to put its decision upon the very questionable ground that anyone has a vested interest in a particular kind of remedy.[11]

The effect of this equality guaranty may be considered from two angles: first, does the guaranty require that the plaintiff should here be accorded a primary right to some relief; and second, if that question is answered in the affirmative, must that relief be that of injunction? As to the first, the Chief Justice states that the guaranty was intended to secure equality of protection not only for all but *against all similarly situated;* and he emphasizes the unequal privileges given the defendants, "the distinction here between the ex-employees and other tort-feasors," the "classification based on the relation of an employer, not to an employee, but to one who has ceased to be so, in respect of torts thereafter committed by such ex-employee," the fact that if competing restaurant keepers "had inaugurated such a campaign," "an injunction would necessarily have issued," and generally the lack of equality between the defendants and other wrongdoers.[12] Justice Pitney here takes issue squarely, stating that undue favoritism to the defendants is not discrimination *against* the plaintiffs, of which discrimination alone

---

is more drastic than the Clayton Act which as shown above is more drastic than the Arizona Act since the latter applies only to the form of remedy, while the others attempt also to define the primary rights of the parties.

[10] While certain statements of the Arizona Court are broad, it would seem that when it is said that the plaintiffs had no cause of action, the words "for injunctive relief" should be supplied. This is borne out by the statement in the first case that a person attacked by a wrongful speech or writing, "if injured," may recover damages, which is a complete remedy, and equity may not be invoked because of the financial irresponsibility of the plaintiffs and the great number of suits made necessary. See 19 Ariz. at p. 394, 171 Pac. at p. 127.

[11] See *Chicago, R. I. & P. Ry. v. Cole* (1919) 251 U. S. 54, 40 Sup. Ct. 68 (citing cases).

[12] It seems scarcely correct to classify employees striking as to terms and conditions of employment as "ex-employees" especially in view of the holding in the *American Steel Foundries* Case that a labor union as a whole was entitled to be considered an interested party in a strike.

they can complain, that it is as to the plaintiffs no more than a failure to include in the general law a case which for the sake of consistency ought to have been covered, and that to disregard this rule is to transform the equality guaranty into an "insistence upon laws complete, perfect, symmetrical."

Upon this point it is submitted with all deference that Justice Pitney is clearly right and that he is borne out by both the history of the Amendment and the history of its enforcement. It was passed after the Civil War in order to place all people on an equality of rights, to prevent a state from *discriminating against* anyone, but not to require absolute uniformity of law.[13] And it has been construed, in the cases cited by the Chief Justice as well as in others, to permit attacks on state laws only by those *who are discriminated against.*[14] If A has a right against X, B must have a similar right against X, unless differentiated by a proper and reasonable classification. But if B has a right against X, he cannot thereby claim that he must have a similar right against Y or object because Y may be privileged where X is not. Such a complaint can only be made by X. So here if the defendants are unfairly privileged as against competing employers, it is for the latter alone to complain.[15]

---

[13] "It (the Amendment) was designed to assure to the colored race the enjoyment of all the civil rights that under the law are enjoyed by white persons, and to give to that race the protection of the general government, in that enjoyment, whenever it should be denied by the states." *Strauder v. West Virginia* (1880) 100 U. S. 303. Mr. Justice Miller's doubt in *The Slaughterhouse Cases* (1873, U. S.) 16 Wall. 36, whether any state action not a discrimination against the negroes would ever be held to come within the purview of the equality provision has, of course, not been substantiated. For a case where the equality clause should properly apply see COMMENTS, *infra,* at p. 422.

[14] The usual rule that only one injured by a statute can question its constitutionality (12 C. J. 760) applies here, so that only one discriminated against by a statute may question it as denying the equal protection of the laws. *Arizona Employers' Liability Cases* (1919) 250 U. S. 400, 39 Sup. Ct. 553; *Jeffrey Mfg. Co. v. Blagg* (1915) 235 U. S. 571, 35 Sup. Ct. 167; *Hendrick v. Maryland* (1915) 235 U. S. 610, 35 Sup. Ct. 140; *Standard Stock Food Co. v. Wright* (1912) 225 U. S. 540, 32 Sup. Ct. 784; *State v. Case* (1918) 132 Md. 269, 103 Atl. 569. See many cases collected, 12 C. J. 768, 769; 32 L. R. A. (N. S.) 954, note. In the case much relied on by the Court, where an anti-trust act was held invalid because of provisions excepting agricultural products and live stock in the hands of the producer or raiser, the question was raised by one upon whom the unequal duty was placed. *Connolly v. The Union Sewer Pipe Company* (1902) 184 U. S. 540, 22 Sup. Ct. 431. The oft-quoted statement in *Yick Wo v. Hopkins* (1886) 118 U. S. 356, 359, 6 Sup. Ct. 1064, that "the equal protection of the laws is a pledge of equal laws" seems to mean little, but it does put an unfortunate emphasis upon equality in the law itself rather than equality in the protection granted.

[15] Thus in the case cited of *Bogni v. Perotti* (1916) 224 Mass. 152, 112 N. E. 853, which perhaps is the nearest in support of the principal case and is by a court most drastic in its attitude towards labor, it is carefully pointed out that a denial of injunctive relief is a discrimination against another *laborer* who does

If the equality clause is thus construed, the effect is to shift the emphasis from the situation of the defendants to that of the plaintiffs. It is not important then that these "tort-feasors" may be unwisely privileged; the question is whether plaintiffs are denied rights which others similarly situated have. And as plaintiffs have such right as all other employers have, the question is therefore entirely one of the reasonableness of the classification which puts employers into a separate group from other plaintiffs. No cumulative weight against the Statute may be piled up because the plaintiffs' competitors are harmed or the defendants are privileged; the case is purely whether the classifiation made is so unreasonable as to deny plaintiffs rights which those similarly situated enjoy.

As to the reasonableness of the classification a glance at any annotations of the digested cases construing the equality clause is highly suggestive. Here appear cases almost without number sustaining a vast variety of classifications—employers and employees under workmen's compensation and employers' liability acts, employers and employees in particular occupations and businesses (such as those in railroad restaurants distinguished from those in all other restaurants,[16]) retailers who are making bulk sales, those who would use the national flag in advertising, junk-dealers, doctors or undertakers distinguished from other humans, and so on in almost endless combinations[17]—while interspersed are only a comparatively few where the classifications attempted have been held unreasonable.[18] With this as a background should be considered "the state of the art"[19] as shown in Justice Brandeis' com-

not come within the terms of the statute and that as to *such laborer*, the validity of the statute may be attacked. The plaintiffs there were such other laborers.

[16] *Dominion Hotel v. Arizona* (1918) 249 U. S. 265, 39 Sup. Ct. 273.

[17] *N. Y. Central Ry. v. White* (1917) 243 U. S. 188, 37 Sup. Ct. 247; *Arizona Employers' Liability Cases* (1919) 250 U. S. 400, 39 Sup. Ct. 553; *Lamieux v. Young* (1909) 211 U. S. 489, 29 Sup. Ct. 174; *Halter v. Nebraska* (1907) 205 U. S. 34, 27 Sup. Ct. 419; *Rosenthal v. New York* (1912) 226 U. S. 260, 33 Sup. Ct. 27; *Collins v. Texas* (1912) 223 U. S. 288, 32 Sup. Ct. 286; *Keller v. State* (1914) 122 Md. 677, 90 Atl. 603. See 11 U. S. Comp. Sts. Ann. 1916, 14817 *et seq.*; 2 *ibid.* Supplement, 1919, 2655 *et seq.*

[18] The effect of some of these at least has been weakened by later decisions. Cf. *Connelly v. Union Sewer Pipe Line Company, supra* note 14, with *Carroll v. Greenwich Ins. Co.* (1905) 199 U. S. 401, 26 Sup. Ct. 66, and *Otis v. Parker* (1903) 187 U. S. 606, 23 Sup. Ct. 168; *Gulf, C. & S. F. Ry. v. Ellis* (1897) 165 U. S. 150, 17 Sup. Ct. 255 (attorneys' fees on small claims against a railroad) with *Atchison, T. & S. F. Ry. v. Matthews* (1899) 174 U. S. 96, 19 Sup. Ct. 609, and *Seaboard Air Line Ry. v. Seegers* (1907) 207 U. S. 73, 28 Sup. Ct. 28; and *Cotting v. Kansas City Stock Yards Co.* (1901) 183 U. S. 79, 22 Sup. Ct. 30, with *St. Louis Consol. Coal Co. v. Illinois* (1902) 185 U. S. 203, 22 Sup. Ct. 616, and *McLean v. Kansas* (1909) 211 U. S. 539, 29 Sup. Ct. 206.

[19] Cf. *Muller v. Oregon* (1908) 208 U. S. 412, 28 Sup. Ct. 324, saying that in patent cases counsel usually open by discussing the state of the art, and referring to Mr. Brandeis' brief then before the Court, which collected authorities showing

prehensive survey of the views of courts and legislatures on this problem, demonstrating a widely-held belief that the relation of employers to their employees deserves and requires special treatment.[20] Finally should be considered the well-settled rule that the act must be sustained unless the classification is clearly unreasonable.[21] It is hard to follow the Court to its conclusion that this classification is clearly unreasonable. The decision is regrettable.

As to the necessity of granting the remedy of injunction, Justice Brandeis again collects authority to show the discretionary character of this particular form of remedy. He shows that it is refused where there is an adequate remedy at law, and also in cases of contracts for personal service, of actionable libels, of mere political rights, where the operations of the police department are involved, in cases of nuisance where the doctrine of balance of convenience or comparative equities obtains, where a remedy is expressly given for a statutory right, and where Congress has prohibited the use of injunctions as in the matters of proceedings in state courts, and the illegal assessment and collection of taxes.

Many people, including some good lawyers, have felt that the injunction was not a proper remedy for a labor dispute. It has not been long used in this country in such disputes and in England it is infrequently employed, resort being had to the criminal law or to actions for damages.[22] However much we may be convinced of its value, it does not seem a necessity to the adjustment of labor difficulties. One may regret, therefore, that an experiment along the lines advocated by so many persons which was to be tried in a limited way in Arizona and

---

the course of legislation upon hours of labor for women, the question then at issue.

[20] Chief Justice Taft suggests that it is a far cry from the classification of employer and employee under workmen's compensation acts to the classification in the principal case. But before the former acts became so familiar to us, which would have seemed the greater step, to impose upon a class "liability without fault" or to deny certain persons in certain cases the equitable remedy of injunction? Cf. Justice McKenna and Justice McReynolds dissenting in *Arizona Employers' Liability Cases, supra* note 14. COMMENTS (1919) 29 YALE LAW JOURNAL, 225. Again the Chief Justice says as to classification: "When fundamental rights are thus attempted to be taken away, however, we may well subject such experiment to attentive judgment." But this "attentive judgment" should be only to determine the existence of a reasonable distinction between those included and those excluded from the operation of the Statute, not to pass on legislative policies. Earlier the Chief Justice seems, impliedly at least, to have admitted that an injunction is not a fundamental right.

[21] *Dominion Hotel v. Arizona* (1919) 249 U. S. 265, 268, 39 Sup. Ct. 273, 274.

[22] See authorities collected by Justice Brandeis, who points out that the injunction did not secure recognition as a remedy in labor disputes in this country until 1888. See also Gregory, *Government by Injunction* (1898) 11 HARV. L. REV. 487, and statement by Mr. Frank Morrison in 1921 quoted in COMMENTS (1921) 31 YALE LAW JOURNAL, 86.

other states has thus been prevented, just as one would regret if the Kansas experiment of the industrial court should be prematurely snuffed out.[23]

A final question is as to the effect of the decision. The case is remanded for the issuance of an injunction if the facts alleged are proved.[24] It appears that the real difference between the State and the Federal Courts is as to the interpretation of the facts—the application of the Statute to the facts. Had the Arizona Court held the defendants' acts to have been not peaceful, the Statute would not have applied. The Supreme Court distinguishes its support of the Clayton Act in the *American Steel Foundries* Case from this case on the ground not only that there is no requirement of equality as to Congressional action, but also because of the construction of this Statute made by the State Court. By this construction the Federal Court is bound.[25] But in view of the usual rule as to the effect of judgments, a decision of the unconstitutionality of an act is only binding in the very case made and anyone may raise the question again in another case.[26] There is thus legally no distinction between a decision as to a statute which appears fair on its face but is unconstitutionally applied, and one not fair on its face. In either case the decision only affects the situation then before the

---

[23] See *supra* note 8.

[24] The Court's conclusion is that "if the evidence sustains the averments of the complaint, an injunction should issue as prayed." But the injunction *prayed* for was, according to the lower court, one "prohibiting the defendant from attending at or near the plaintiffs' place of business for the purpose of *peaceably* communicating the existence of a strike pending, and of *peaceably* persuading any person from patronizing the plaintiffs, or from recommending, advising, or persuading others so to do." 20 Ariz. at p. 9, 176 Pac. at p. 571. The Court had decided, in spite of Justice Holmes' view to the contrary, that the invalidity of this Statute did not render invalid the entire Statute giving the Arizona courts power to issue injunctions. This point is not discussed herein. See *Davis, Director General of Railroads v. Wallace* (Jan. 19, 1922) U. S. Sup. Ct., Oct. Term, 1921, No. 329.

[25] *Lindsley v. Natural Carbonic Gas Co.* (1911) 220 U. S. 61, 73, 31 Sup. Ct. 337, 338; *Hill v. Dockery* (1903) 191 U. S. 165, 24 Sup. Ct. 53. But there are statements that the Supreme Court is not bound by the lower court's statement of the meaning of the Statute. *Yick Wo v. Hopkins, supra,* note 14; *Atchison, T. & S. F. Ry. v. Mathews* (1899) 174 U. S. 96, 100, 19 Sup. Ct. 609, 611; *Hodge v. Muscatine County* (1905) 196 U. S. 276, 25 Sup. Ct. 237. Again a law fair on its face may be so improperly applied as to violate the Constitution. *Yick Wo v. Hopkins, supra,* note 14; *Reagan v. Farmers Loan & Trust Co.* (1894) 154 U. S. 362, 390, 14 Sup. Ct. 1047, 1051. Cf. Pound, J., dissenting in *People v. Doyle* (1921) 232 N. Y. 96, commented on in CURRENT DECISIONS, *infra* at p. 450. Any apparent inconsistency here should, it seems, be reconciled by recognizing the rule stated in the text that the decision of unconstitutionality binds only the parties to the case and their privies, and hence applies only to the application of the Statute made to the particular facts in issue.

[26] *Middleton v. Texas, P. & L. Co.* (1919) 249 U. S. 152, 39 Sup. Ct. 227; *Shephard v. Wheeling* (1887) 30 W. Va. 479, 4 S. E. 635; *Rutten v. Paterson* (1906) 73 N. J. L. 467, 64 Atl. 573; *In re Wine* (1920, Fla.) 83 So. 627.

court. Practically, however, in the latter case, the matter will not again be litigated, and the Statute may be treated as void.[27] Hence we may properly emphasize, as does the Supreme Court, that it is here definitely the application of the Statute made by the State Court which is found objectionable. There is no reason why the State Court may not on another set of facts make its views conform to those now promulgated as the law of the land.[28] C. E. C.

FOREIGN EXCHANGE TRANSACTIONS

Foreign exchange transactions have become of novel importance during the last six years and a great amount of litigation has produced confused decisions. The war, the fluctuating rates of exchange, and the apparent position of the United States as the world's bankers have contributed to a situation that demands legal clarity and certainty.

A large part of the business of foreign exchange consists of selling credits available at a foreign point to those who desire to make payments at that point. The purchaser of foreign exchange seldom buys currency; he buys credit, a chose in action, made available abroad by an agent or correspondent of the seller. The draft which may be delivered to the purchaser is only a piece of paper evidencing the transaction; the message which may be sent to the seller's correspondent by mail or by cable is merely part of the mechanics of making the credit available.[1] The actual money paid by the purchaser is not transmitted to the foreign point. It becomes the seller's property and he does not hold it as trustee or agent until the payment of the credit is effected.[2]

The transactions are of various forms, each governed to a large extent by the terms of a special contract. In the case of a draft payable in a foreign country, the seller draws an order on his correspondent, warranting that it will be accepted and paid when presented at the foreign point. The buyer is usually given the draft and undertakes the duty and risk of forwarding it abroad by mail. The cable transfer is a much faster method. The seller agrees to establish forthwith by means of a cable message a credit in favor of a payee abroad designated by the purchaser. The seller generally specifies in the contract that he will not be responsible for errors or delays in the transmission of the message unless caused by him. The seller of a cable transfer ordinarily undertakes to notify the payee abroad, designated by the purchaser, that the credit has been established and may undertake to hand over

[27] *Norton v. Shelby County* (1886) 110 U. S. 425, 6 Sup. Ct. 112.

[28] *Middleton v. Texas, P. & L. Co., supra* note 26.

[1] It seems clearly erroneous to consider the draft as the thing bought. But see (1921) 35 HARV. L. REV. 88.

[2] *Legniti v. Mechanics & Metals National Bank* (1921) 230 N. Y. 415, 130 N. E. 597.